STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Independent Telephone Association	)	
	)	
	)	**00-0233**
Petition for initiation of an investigation of the	)	
necessity of and the establishment of a	)	
Universal Service Support Fund in	)	
accordance with Section 13-301(d) of	)	
the Public Utilities Act	)	
	)	**CONSOLIDATED**
Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	**00-0335**
Investigation into the necessity of and, if	)	
Appropriate he establishment of a universal	)	
support fund pursuant to Section 13-301(d)	)	
of the Public Utilities Act.	)	

REPLY TO BRIEFS ON EXCEPTIONS ON REHEARING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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The Staff of the Illinois Commerce Commission (hereafter "the Staff"), pursuant to Section 200.830 of the Rules of Practice before the Illinois Commerce Commission, 83 Ill. Admin. Code 200.830, as its Brief on Exceptions herein, states as follows:

1. Verizon

Verizon essentially takes no issue with the Proposed Order. *See* Verizon BOE. It considers the affordable rate to be properly fixed at $20.39. Verizon BOE at 1. It further takes no exception to the limitation of support to primary lines, and to the 3/5 year phase-in. Verizon BOE at 2.

In response to Verizon, the Staff merely notes that the positions Verizon advocates in its BOE are not the ones it advanced at hearing, or in prior briefs in this proceeding. Moreover, from the Staff's perspective, this rehearing is being undertaken, at least to a significant degree, to prevent prejudice to Verizon's ratepayers, who would, absent action by the Commission, have been compelled to subsidize small company subscribers paying lower rates. The Commission should view this consideration as paramount.

2. Ameritech

Ameritech Illinois argues that the phase-in of the affordable rate should take place over no longer than three years, arguing that five years is "simply too long." Ameritech BOE at 6-7. Indeed, to the extent that the Commission determines that the proper affordable rate is $20.39, Ameritech advocates a two-year phase-in. Id. at 7. Ameritech contends that this will be sufficient to ameliorate "rate shock." Id. at 8.

The Staff, while concurring with Ameritech that the Intervenors' proposed phase-in period is too long, nonetheless considers Ameritech's to be altogether too short to prevent rate shock. Ameritech's proposal appears to result in monthly rate increases of $3 or more each year, and therefore cannot be said to prevent rate shock. To the extent that the affordable rate remains $20.39, the phase-in period should be 3 years, with rates increasing by one-third of the difference between the subscriber's current rate and the affordable rate of $20.39 or $2, whichever is greater.

Ameritech also contends that the affordable rate usage adder of $5.24 is consistent with 80 calls charged at the home exchange rate of $0.034 per call and the remainder using Verizon's extended service rate. Id. at 2. In fact, the usage adder of $5.24 is consistent with 75.8 calls charged at the home exchange rate of $0.034 and 24.2 calls charged at the extended area local rate of $0.11. Nonetheless, Ameritech's calculations demonstrate that Dr. Beauvais could have arrived at $5.24 for the usage additive – if he did indeed price out local calls – by pricing out at least some of these calls at EAS local rates. This is a proper method, because some Verizon exchanges have EAS (USF eligible companies also have exchanges with EAS). The Proposed Order, however, does not price out any of the 100 calls it contends the average Verizon subscriber makes at EAS local rates, and therefore improperly calculates the usage additive for a Verizon subscriber. The Staff, therefore, considers it highly likely that Dr. Beauvais calculated his usage additive by averaging local usage expenditures from Verizon subscriber bills.

3. Subsidized Companies

The IITA, Harrisonville, and Leaf River all argue that all lines should be supported, IITA BOE at 7, *et seq.*; Harrisonville BOE at 4 *et seq.*; Leaf River BOE at 1-6. The Staff concurs in the proposition that all lines should be supported, but is compelled to respond to some of the arguments these parties advance in support of this proposition.

The Staff has, in numerous pleadings in this proceeding, set forth its bases for recommending that the Commission support all lines, and does not propose to reiterate them here. In general, the Staff's recommendation was based on a concern for the effect that not supporting all lines would have upon subscribers, and for administrative efficiency. *See, e.g.,* Staff BOE on Rehearing at 10 *et seq*. Moreover, the Staff contends that the affordable rate should be somewhat higher than any of the alternative versions of the Verizon rate under discussion in this proceeding. Id.

The small carriers, however, argue, in essence, that subsidizing all lines is either required by law, or will result in small carriers being unable to earn their authorized rate of return if all lines are not supported, an outcome the small carriers view as violating the Public Utilities Act. *See, e.g.*, Harrisonville BOE, ¶ 5. In the alternative, the small carriers argue that the fund size should not be reduced even if the Commission continues to conclude that only first lines should be supported. *See, e.g*. IITA BOE at 3 *et seq.* While sound policy and administrative efficiency require that second lines be supported, many of the arguments raised by IITA, Harrisonville and Leaf River should be rejected.

A. IITA

IITA's arguments are quite straightforward. IITA contends that it is improper for the Commission to reduce the fund size, even if it elects to support only primary lines. IITA BOE at 4-5. This, posits IITA, is because the small companies have demonstrated going-forward economic need based on HAI results, which the Commission restricted through rate of return analysis. Id. at 5. Since the HAI results, even multiplied by .86[1], well exceeds the size of the fund established in the Second Interim Order, contends IITA, the fund size should not be further reduced, especially as this will "immediately deny the qualifying companies the opportunity to earn the established rate-of-return." Id.; *see also* IITA BOE at 7. IITA further contends that its analysis of the *Second Interim Order* demonstrates that the Commission did not intend the limitation on second lines to result in reduced fund size. Id. at 4-5.

IITA further argues that decreasing the fund size based upon supporting only primary lines will cause hardship to small companies and their customers. Id. at 7-8. It also contends that, in effect, limiting subsidies to primary lines constitutes a *de facto* increase in the affordable rate. Id. at 8-9. The IITA further asserts that subsidizing only primary lines will cause administrative problems. Id. at 11. Finally, IITA argues that the cost of the subsidy to individual ratepayers is modest, and the hardships associated with paying for a subsidy that supports all lines are outweighed by those associated with not receiving it. Id. at 9-10.

The Staff concurs in the proposition that various administrative problems will flow from limiting the subsidy to primary lines. The Staff further urges the

[1] Approximately 86% of small carrier subscriber lines are primary lines.

Commission to be cognizant of the hardships that may be imposed on subscribers. However, at least one of IITA's arguments flies in the face of Section 13-301(d), and should be rejected.

First, IITA's assertion that its members will be unable to earn their rates of return is questionable, and in any case irrelevant. It is irrelevant because the General Assembly clearly did not consider it an issue in enacting Section 13-801(d). The statute clearly provides that eligible companies receive support, to the extent that their costs of providing supported services exceed the affordable rate set by the Commission, in whatever amount results *after* federal support for the costs of providing the services is subtracted. 220 ILCS 5/13-301(d). Section 13-301(d) makes no mention of any recipient company's revenue requirement or rate of return; instead, state high cost support is clearly intended to help defray the *forward-looking costs* of providing high-cost service, without respect to carriers' bottom lines.

Second, to the extent that high-cost carriers find high-cost support insufficiently lucrative, they are free – indeed, they are far freer than other carriers – to raise other rates, such as those for vertical services. Section 13-504 of the Public Utilities Act provides that carriers with 35,000 or fewer access lines may increase rates on 30 days' notice to the Commission and affected subscribers, and the Commission cannot even *investigate* such an increase unless 10% of affected subscribers file a petition or complaint requesting such an investigation. 220 ILCS 5/13-504(a). Accordingly, the small carriers have the freedom to raise rates almost immediately.

High cost support is not required to be – nor <u>should</u> it be – a vehicle to insure that high cost carriers are profitable. That is a matter best left to the carriers themselves; obviously, the General Assembly considered this to be the case, or it would not have largely exempted the small carriers from Commission oversight of their rates*. See, generally*, 220 ILCS 5/13-504.

B. Leaf River and Harrisonville

Leaf River and Harrisonville appear to argue that the Commission has a statutory obligation to <u>increase</u> the size of the intrastate high cost fund. *See* <u>Harrisonville BOE</u>, ¶ 5 ("[T]he Proposed Order reduces the size of the fund, <u>rather than increasing it</u>, contrary to the language of Section 13-301(d)…[.]"); *see also* <u>Leaf River BOE</u> at 5-6. Harrisonville and Leaf River base this unusual premise upon the notion that, since all federal support is deducted – including that garnered from second lines – the small companies will be subject to what Harrisonville describes as "double-dipping," <u>Harrisonville BOE</u>, ¶ 5, a curious term to use to describe reduction in an unearned subsidy received from others. Harrisonville and Leaf River argue that, to the extent that state high cost support does not include second lines, that percentage of federal support attributable to second lines should not be subtracted from rural companies' state support. <u>Harrisonville BOE</u>, ¶ 5; <u>Leaf River BOE</u> at 5-6.

This rather obscure argument suffers from at least two serious defects. First, under Section 13-301(d), carriers are eligible for support based upon whether their economic costs exceed the affordable rate after subtraction of "any federal universal service support received for the same or similar costs of providing the supported services[.]" 220 ILCS 5/13-301(d). Clearly, and contrary to Harrisonville's contention, "the supported services" are those nine set forth in 47 CFR 54.101, and in the *Second Interim Order* at 4.

Harrisonville argues that "Section 13-301 requires that the State do the same because to do otherwise would violate Section 13-301's requirement that the State USF shall support <u>at a minimum</u> the services supported by the FCC, which means all lines." <u>Harrisonville BOE</u>, ¶ 5. Leaf River reiterates the same argument. <u>Leaf River BOE</u> at 6. Advancing this argument, however, requires a significant misunderstanding, or at least misstatement, of the applicable law.

Section 13-301(d) requires the Commission to "[d]efine the group of services to be declared 'supported telecommunications services' that constitute 'universal service'. This group of services shall, at a minimum, include those services as defined by the Federal Communications Commission and as from time to time amended." 220 ILCS 5/13-301(e)(1), *incorporated by reference into* 220 ILCS 5/13-301(d). As the Commission noted in the *Second Interim Order*:

> The parties reached general agreement that the services eligible for support should be those previously identified by the FCC including:
>
> 1. Voice grade access to the public switched network
> 2. Local usage
> 3. Dual tone multi-frequency signaling or its equivalent
> 4. Single-party service or its functional equivalent
> 5. Access to emergency services
> 6. Access to operator services
> 7. Access to interexchange service
> 8. Access to directory assistance
> 9. Toll control services for qualifying low-income consumers
>
> *Second Interim Order* at 4.

This is consistent with the FCC's definition of supported services, which consists of the nine "services or functionalities" set forth above, and makes no mention of second lines, for the excellent reason that they are not a "service" within the meaning of 47 CFR 54.101, in the view of the FCC. *See* 47 CFR 54.101.

The Commission has correctly defined the services entitled to support, in compliance with Sections 13-301(d) and (e)(1). Accordingly, Section 13-301(d) requires deduction of "any" federal support that small carriers receive for the same or similar costs of providing these services. Leaf River's and Harrisonville's "double dipping" contention is therefore spurious. Second lines are not, in the view of either the FCC or this Commission, a "supported service" within the meaning of 47 CFR 54.101 or Section 13-301(d). The Commission should therefore deduct from carriers' state high cost subsidy amounts all federal support.

The second significant defect in Leaf River's and Harrisonville's argument is pointed out, perhaps unintentionally, in Leaf River's Brief on Exceptions. Leaf River states that "[t]he evidence indicates that the cost of hooking up secondary lines is *de minimus* or virtually zero." Leaf River BOE at 6. Assuming this to be true, *small carriers themselves* would be "double dipping" if all federal subsidies were not subtracted, since, according to Leaf River, no actual costs are incurred.

Leaf River reiterates a number of arguments it has advanced in the past. Specifically, it argues that a failure to subsidize all lines, or otherwise generally maintain high levels of universal support payments to small carriers, is contrary to federal and state policies favoring the deployment of advanced services. Leaf River BOE at 9-10. Leaf River's basis for this conclusion has never been entirely clear to the Staff, since voice-grade access to the network – what high cost subsidies, of the type at issue here, are intended to support – is completely different from the advanced services contemplated by the General Assembly in Section 13-517, or by the Congress in Section 706. Likewise, the "digital divide" is not an issue; customers can – and do, millions of times each day – access the Internet using their primary lines.

Clearly, state high cost support is intended to support services that are eligible for support, not advanced services, which are not eligible for such support. *See* 220 ILCS 5/13-301(d) (carriers are eligible for support if their "economic costs of providing services for which universal service support may be made available exceed the affordable rate established by the Commission for such services … , less any federal universal service support received for the same or similar costs of providing the supported services".) In this case, the services eligible for support are those nine services described in 47 CFR 54.101 and the *Second Interim Order*. The Commission clearly may – at some point in the future – determine that services other than those set forth above should be supported. *See* 220 ILCS 5/13-301(e)(1) ("The Commission shall, from time to time or upon request, review and, if appropriate, revise the group of Illinois supported telecommunications services and the terms of the fund to reflect changes or enhancements in telecommunications needs, technologies, and available services.") However, the Commission has, for the time being at least, spoken to this issue, and the question of what services should be supported is not at issue in this rehearing. Accordingly, Leaf River's arguments must fail.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted,

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